(Decision No. C93-1192)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES RELATING TO THE GAS PIPELINE SAFETY PROGRAM, AMENDMENTS TO 4 CCR 723-11.	)	DOCKET NO. 93R-548G NOTICE OF PROPOSED RULEMAKING

Mailed Date: September 30, 1993
Adopted Date: September 29, 1993

STATEMENT

BY THE COMMISSION:

The Colorado Public Utilities Commission hereby gives notice of proposed rulemaking regarding amendments to the Rules Of The Colorado Public Utilities Commission Concerning The Federal Pipeline Safety Program, 4 CCR 723-11. The intent of the proposed rules is to amend existing rules concerning Commission enforcement of the Federal Pipeline Safety Program, 49 CFR 190. Existing rules, found at 4 CCR 723-11, were adopted to comply with the mandates promulgated by the United States Department Of Transportation ("DOT") which require state agencies certified as federal agents to the Federal Pipeline Safety Program to adopt and enforce DOT rules. The proposed amendments to 4 CCR 723-1 incorporate federal rules, but make non-substantive modifications to reflect Commission-specific terminology. The proposals are also intended to comply with recent amendments to sections 40-2-115, C.R.S. (Commission enforcement of the Natural Gas Pipeline Safety Act of 1968 as amended), and 40-7-117, C.R.S. (penalty assessments).

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A copy of the proposed rules is attached to this notice of proposed rulemaking. Sections 40-2-108, 40-2-115, and 40-3-102, C.R.S. supply the statutory authority for the proposed rules. The Commission will conduct a hearing on the proposed rules and related issues beginning at 9:00 a.m. on November 19, 1993. The hearing will be conducted by an administrative law judge in Hearing Room A, Office Level (OL) 2, 1580 Logan Street, Denver, Colorado. Interested persons may submit written comments on the rules and present these orally at hearing, unless the Commission deems oral presentations unnecessary. Interested persons may also file written comments before the hearing. All submissions will be considered by the Commission.

THEREFORE THE COMMISSION ORDERS THAT:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the October 10, 1993 edition of The Colorado Register. At the time of filing with the Secretary of State, this notice shall also be filed with the Office of Regulatory Reform.

2. Hearing on the proposed rules and related matters shall be held beginning at 9:00 a.m. on November 19, 1993 in Hearing Room A, OL 2, 1580 Logan Street, Denver, Colorado. At the time set for hearing, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

3. Interested persons may file written comments in this docket before hearing. All submissions, whether oral or written, will be considered.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING September 29, 1993.

(SEAL)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Robert E. Temmer

Christine E. M. Alvarez

Vincent Majkowski
Commissioners

ATTEST: A TRUE COPY

Bruce N. Smith
Director

CR16-3107

Decision No. C93-1192 Attachment
Notice of Proposed Rulemaking
in Docket No. 93R-548G

4 CCR 723-11 REVISED

RULES GOVERNING THE ENVORCEMENT

OF GAS PIPELINE SAFETY

AUGUST 3, 1993

formerly Part 190

RULES GOVERNING THE ENFORCEMENT OF GAS PIPELINE SAFETY
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Authority: , 49 CFR 190, § 40-2-115 C.R.S, § 40-2-108 C.R.S., § 40-6-101(1), Article 4 of Title 24, C.R.S.

RULES GOVERNING THE ENFORCEMENT OF GAS PIPELINE SAFETY

Rule 1. Statement of Basis and Purposes.

These rules prescribe enforcement procedures utilized by the Pipeline Safety Group, Safety and Enforcement Section of the Colorado Public Utilities Commission ("Commission"), acting as agent for the United States Department of Transportation by virtue of the annual submission for certification under Section 5(a) of the Natural Gas Pipeline Safety Act of 1968, as amended, 49 U.S.C. §§ 1671, et seq., ("NGPSA"). Under this agreement, the State of Colorado enforces the provisions of the NGPSA with respect to the intrastate pipeline transportation of gas over which it has jurisdiction under state law. Gas facilities include gas gathering, distribution, transmission, master meter and direct sales systems. The Commission has authority under Section 40-2-115, C.R.S. to enter into cooperative agreements with any agency of the United States government and to adopt rules and regulations to administer and enforce the safety laws and regulations of the United States under the NGPSA. The Commission has authority under Section 40-2-108, C.R.S. to adopt rules and regulations as are necessary for the proper administration and enforcement of Title 40 of the Colorado Revised Statutes.

22 **Rule 2. Definitions.**

23 As used in this part:

24 (a) **"The NGPSA"** means the Natural Gas Pipeline Safety Act of 1968,
25 as amended, 49 U.S.C. §1671 et. seq., as it existed on the
26 date these rules became effective.

27 (b) **"OPS"** means the Office of Pipeline Safety, which is part of
28 the Research and Special Programs Administration, U.S.
29 Department of Transportation.

30 (c) **"Presiding Official"** means the chairman or senior commissioner
31 in a hearing conducted before the Commission en blanc, or
32 individual commissioner or administrative law judge in a
33 hearing conducted by a single commissioner or administrative
34 law judge.

35 (d) **"Person"** means any individual, firm, joint venture,
36 partnership, corporation, association, municipality,
37 cooperative association, or joint stock association, and
38 includes any trustee, receiver, assignee, or personal
39 representative thereof.

40 (e) **"Respondent"** means a person upon whom a compliance directive,
41 notice of probable violation, consent stipulation, or order to
42 show cause has been served.

43 (f) **"State"** means the State of Colorado.

44 (g) **"Hearing"** means any hearing provided in Rule 9 of these rules.

45 (h) **"Direct Sales Pipeline"** means a pipeline from an interstate or
46 intrastate gas pipeline to a direct sales meter or the
47 connection to a direct sales customer's piping, whichever is
48 farther downstream. A direct sales meter is the meter that
49 measures the transfer of gas to a direct sales consumer
50 purchasing gas for its own consumption, and does not include
51 small-volume users, such as farm taps.

52 (i) **"Chief"** means the head of the Safety and Enforcement Section
53 of the Public Utilities Commission of the State of Colorado.

54 (j) **"Staff"** means the staff of the Gas Pipeline Safety Group, a
55 unit of the Safety and Enforcement Section of the Public
56 Utilities Commission of the State of Colorado.

57 (k) **"Commission"** means the Public Utilities Commission of the
58 State of Colorado.

59 (l) **"Director"** means the Director of the Commission.

60 (m) **"Intrastate pipeline transportation"** means pipeline facilities
61 and transportation of gas within the State of Colorado which
62 are not subject to the jurisdiction of the Federal Energy
63 Regulatory Commission under the Natural Gas Act.

64 **Rule 3. Service.**

65 (a) Each order, notice, or other document required to be served
66 under these rules shall be served personally or by registered
67 or certified mail.

68 (b) Service upon a person's duly authorized representative or
69 agent constitutes service upon that person.

70 (c) Service by registered or certified mail is complete upon
71 mailing. An official U.S. Postal Service receipt evidencing
72 a registered or certified mailing constitutes prima facie
73 evidence of service.

74 **Rule 4. Subpoenas.**

75 (a) The Commission, any commissioner, any administrative law
76 judge, or the Director of the Commission, may issue a subpoena
77 in accordance with the provisions of § 40-6-103(1), C.R.S.
78 (b) Subpoena practice before the Commission shall be governed by
79 Rule 45 of the Colorado Rules of Civil Procedure, except as
80 provided in this rule and §§ 40-6-102 and 103, C.R.S. When
81 Rule 45 is applied to Commission subpoena practice, the word
82 "court" in Rule 45 means the Commission, a hearings
83 commissioner, an administrative law judge, or the Director of
84 the Commission.
85 (c) Enforcement of any subpoena issued under this rule shall be in
86 the district court, as provided in § 40-6-103(2), C.R.S.

87 **Rule 5. Inspections.**

88 (a) Staff employees authorized by the Chief, upon presenting
89 appropriate credentials are authorized to enter upon, inspect,
90 and examine, at reasonable times and in a reasonable manner,
91 the records and properties of persons subject to the NGPSA and
92 these rules to the extent such records and properties are

93 relevant to determining the compliance of such persons with
94 the NGPSA, or state law, rules, regulations, or orders issued
95 thereunder.

96 (b) Inspections are ordinarily conducted pursuant to one of the
97 following:
98 (1) Routine scheduling by the Chief;
99 (2) A complaint received from a member of the public;
100 (3) Information obtained from a previous inspection;
101 (4) Pipeline accident or incident; or
102 (5) Whenever deemed appropriate by the Chief.
103 (6) At the request of the Western Region Director, OPS,
104 United States Department of Transportation.

105 (c) If, after an inspection, the Staff believes that further
106 information is needed to determine appropriate action, the
107 Staff may send the owner or operator a "Request for Specific
108 Information" to be answered within 30 days after receipt of
109 the letter.

110 (d) To the extent necessary to carry out the responsibilities of
111 the Commission under the NGPSA, and/or state rules and
112 regulations, the Staff may require testing of portions of
113 pipeline facilities subject to the NGSPA or state
114 regulations which have been involved in or affected by an
115 accident. However, before exercising such authority, the Staff

shall make every effort to negotiate a mutually acceptable plan with the owner of such facilities for performing such testing.

(e) When the information obtained from an inspection or from other appropriate sources indicates that further action is warranted, the Chief may issue a warning letter under Rule 6 of these rules, or may initiate one or more enforcement proceedings prescribed in these rules.

Rule 6. <u>Warning letters.</u>

Upon determining that a probable violation of the NGPSA, or any State rule, regulation or order issued thereunder has occurred, the Chief may issue a Warning Letter notifying the owner or operator of the probable violation and advising him to correct it or be subject to enforcement action under these rules.

Rule 7. <u>Notice of probable violation.</u>

(a) Except as otherwise provided by these rules, the Chief may commence an enforcement proceeding by serving a notice of probable violation on a person subject to the NGPSA or State rules and regulations adopted by the Commission under the

135 NGPSA charging him with a probable violation of the NGPSA, or
136 any State rule and regulation, or order issued thereunder.

137 (b) A notice of probable violation issued under this rule shall
138 include:
139 (1) A statement of the provisions of the law, rules,
140 regulations or orders which the respondent is
141 alleged to have violated and a statement of the
142 facts upon which the allegations are based;
143 (2) A notice of response options available to the
144 respondent under Rule 8;
145 (3) If a civil penalty is proposed under Rule 12, the
146 amount of the proposed civil penalty and the
147 maximum civil penalty for which respondent may be
148 liable under law; and
149 (4) If a compliance directive is proposed under Rule
150 10, a statement of the remedial action being sought
151 in the form of a proposed compliance directive.

152 (c) The Chief may amend a notice of probable violation at any time
153 prior to the commencement of a hearing under Rule 9, or with
154 leave of the presiding official after commencement of the
155 hearing. If an amendment includes any new material
156 allegations of fact or proposes an increased civil penalty
157 amount , the respondent shall have the opportunity to respond
158 as provided in Rule 8.

159 **Rule 8.** Response options.

160 Within 30 days after his receipt of a notice of probable
161 violation the respondent shall respond to the Chief in any the
162 following ways:

163 (a) When the notice of probable violation contains a proposed
164 civil penalty,
165 (1) the respondent may pay the proposed civil penalty
166 as provided in Rule 14 and the Staff will close the
167 case with prejudice;
168 (2) the respondent may submit an offer in compromise of
169 the proposed civil penalty under paragraph (c) of
170 this rule and paragraph (a) of Rule 14;
171 (3) the respondent may submit written explanations,
172 information or other materials in answer to the
173 allegations or in mitigation of the proposed civil
174 penalty; or
175 (4) the respondent may request a hearing under Rule 9.

176 (b) When the notice of probable violation contains a proposed
177 compliance directive,
178 (1) the respondent may agree to the proposed compliance
179 directive;

180 (2) the respondent may request the execution of a
181 consent stipulation under Rule 11;
182 (3) the respondent may object to the proposed
183 compliance directive and submit written
184 explanations, information or other materials in
185 answer to the allegations in the notice of probable
186 violation; or
187 (4) the respondent may request a hearing under Rule 9.

188 (c) An offer in compromise under paragraph (a)(2) of this rule
189 shall be made by the respondent submitting a check or money
190 order for the amount offered. If the offer in compromise is
191 accepted by theChief, the respondent will be notified in
192 writing that the acceptance is in full settlement of the
193 proposed civil penalty . If an offer in compromise submitted
194 under paragraph (a)(2) of this rule is rejected by the Chief,
195 it shall be returned to the respondent with written
196 notification. Within 10 days of his receipt of such
197 notification, the respondent shall again respond to the Chief
198 in one or more of the ways provided in paragraph (a) of this
199 rule.

200 (d) If the respondent fails to respond in accordance with this
201 rule, the Notice of Probable Violation shall be set for
202 hearing at a time and place convenient to the Commission.
203

204 **Rule 9.** Hearing.

205 (a) A request for a hearing in response to a notice of probable
206 violation issued under Rule 7 shall be accompanied by a
207 statement of the issues which the respondent intends to raise
208 at the hearing. The issues may relate to the alleged
209 violations, new information or to the proposed compliance
210 directive or proposed civil penalty amount. A respondent's
211 failure to specify an issue may result in waiver of his right
212 to raise that issue at the hearing.

213 (b) The hearing shall be held in accordance with the Rules of
214 Practice and Procedure of the Commission, 4 CCR 723-1 and
215 article 6 of Title 40, Colorado Revised Statutes.

216 Rule 10. **Compliance directives.**

217 When the Staff or OPS has reason to believe that a person is
218 engaging in conduct which involves a violation of the NGPSA, or any
219 State rule, regulation or order issued thereunder, and if the
220 nature of the violation and public safety warrant, the Staff may
221 conduct an investigation to determine the nature and extent of the
222 violation and the Chief may issue a letter directing compliance.

223 Rule 11. <u>Consent stipulations.</u>

224 (a) At any time before the issuance of a compliance directive
225 under Rule 10, the Chief and the respondent may agree to
226 dispose of the case by joint execution of a consent
227 stipulation.

228 (b) A consent stipulation executed under paragraph (a) of this
229 rule shall include:
230 (1) An admission by the respondent of all
231 jurisdictional facts;
232 (2) An express waiver by the respondent of further
233 procedural steps, including his right to a hearing
234 under Rule 9, his right to seek judicial review or
235 otherwise challenge or contest the validity of the
236 stipulation;
237 (3) An acknowledgement by the respondent that the
238 notice of probable violation may be used to
239 construe the terms of the consent stipulation; and
240 (4) A statement of the actions required of the
241 respondent and the time by which such actions shall
242 be accomplished.

243 Rule 12. **Civil penalties.**

244 (a) As provided in Section 40-7-117, C.R.S., any person who is
245 determined to have violated a provision of the NGPSA or any
246 state rule, regulation or order issued thereunder, is subject
247 to a civil penalty not to exceed $10,000 for each violation
248 for each day the violation continues, except that the maximum
249 civil penalty shall not exceed $500,000 for any related series
250 of violations.

251 (b) No person shall be subject to a second civil penalty for the
252 violation of any provision of the NGPSA, or any State rule or
253 regulation adopted thereunder, or any order issued pursuant to
254 Rules 10, 11, or 15, if both violations are based on the same
255 act.

256 Rule 13. **Civil penalty considerations.**

257 The presiding official may impose a civil penalty under these
258 rules only after considering:

259 (a) The nature, circumstances and gravity of the violation;

260 (b) The degree of the respondent's culpability;

261 (c) The respondent's history of prior offenses;

262 (d) The respondent's ability to pay;

263 (e) Any good faith by the respondent in attempting to achieve
264 compliance;

265 (f) The effect on the respondent's ability to continue in
266 business; and

267 (g) Such other matters as equity and fairness may require.

268 Rule 14. **Payment of penalty.**

269 (a) Payment of a civil penalty under these rules shall be by
270 check or money order payable to the "Public Utilities
271 Commission of the State of Colorado".

272 (b) If a respondent fails to pay the full amount of a civil
273 penalty assessed under these rules or fails to make an offer
274 in compromise as provided by paragraph (c) of this rule
275 within 20 days after service of a final decision, the
276 Commission may refer the case to the Attorney General's Office
277 with a request that an action be commenced in court to collect
278 the civil penalty.

279 (c) Within 20 days after service of a final decision assessing a
280 civil penalty under these rules, the respondent may offer to
281 compromise the assessed penalty by submitting, in the manner
282 required by paragraph (a) of this rule, payment in the amount
283 offered. The Chief may accept or reject the compromise offer
284 on behalf of the Commission. If the Chief accepts the
285 compromise, the respondent shall be notified in writing that
286 the acceptance is in full settlement of the civil penalty
287 action. If the compromise offer is rejected it shall be
288 returned to the respondent with written notification. Payment
289 of the full amount of the civil penalty assessed shall become
290 due 20 days after service of the notice rejecting the
291 compromise. If the respondent fails to pay the full penalty
292 assessed within 20 days after service, the Commission may
293 request that the Attorney General commence a civil action as
294 provided in paragraph (b) of this rule.

295 (d) If a respondent elects to make an offer in compromise of a
296 civil penalty proposed in a notice of probable violation
297 issued under Rule 7, he shall do so in accordance with the
298 procedures set forth in Rule 8.

299 Rule 15. **Hazardous facility orders.**

300 (a) Except as provided in paragraph (b) of this rule, if the
301 Commission finds, after reasonable notice and opportunity for
302 hearing in accordance with paragraph (c) of this rule, a
303 particular pipeline facility to be hazardous to life or
304 property, it shall issue an order pursuant to this rule
305 requiring the owner or operator of the facility to take
306 corrective action. Corrective action may include suspending
307 or restricting the use of the facility, physical inspection,
308 testing, repair, replacement, or other action, as appropriate.

309 (b) The Commission may waive the requirement for notice and
310 hearing under paragraph (a) of this rule before issuing an
311 order pursuant to this rule when it determines that notice and
312 hearing may result in the likelihood of serious harm to life
313 or property. However, the Commission shall include with the
314 order a notice informing the owner or operator of his right
315 to a hearing upon request as soon as practicable after
316 issuance of the order. The provisions of paragraph (c)(2) of
317 this rule apply to an owner or operator's decision to exercise
318 his right to a hearing. The purpose of such a post-order
319 hearing is for the Commission to determine whether the order
320 should remain in effect or be amended, rescinded or suspended
321 in accord with paragraph (g) of this rule.

322 (c) Notice and hearing:

323 (1) An order to show cause and notice of hearing under
324 this rule shall be served in accordance with Rule
325 3, upon the owner or operator of an alleged
326 hazardous facility. The order to show cause shall
327 allege the existence of a hazardous facility,
328 stating the facts and circumstances supporting the
329 issuance of a "hazardous facility order", and
330 providing the owner or operator an opportunity for
331 a hearing, identifying the date, time and location
332 of the hearing.

333 (2) A hearing under this rule shall be presided over by
334 a presiding official from the Commission. The
335 hearing shall be conducted in accordance with the
336 Rules of Practice and Procedure of the Commission
337 and article 6 of Title 40, C.R.S.

338 (3) Within 48 hours after conclusion of a hearing under
339 this rule, the presiding official shall issue a
340 recommended decision to the Commission. If the
341 presiding official finds the facility to be
342 hazardous to life or property he shall issue an
343 order in accordance with this rule. If he does not
344 find the facility to be hazardous to life or
345 property, he shall discharge the order to show
346 cause.

347 (d) The presiding official may find a pipeline facility to be
348 hazardous to life or property under paragraph (a) of this
349 rule:
350 (1) If under the facts and circumstances he determines
351 the particular facility is hazardous to life or
352 property; or
353 (2) If the pipeline facility or a component thereof has
354 been constructed or operated with any equipment,
355 material, or technique which he determines is
356 hazardous to life or property.

357 (e) In making a determination under paragraph (d) of this rule,
358 the presiding official shall consider, if relevant:
359 (1) The characteristics of the pipe and other equipment
360 used in the pipeline facility involved, including
361 its age, manufacturer, physical properties
362 including its age, manufacturer, physical
363 properties (including its resistance to corrosion
364 and deterioration), and the method of its
365 manufacture, construction or assembly;
366 (2) The nature of the materials transported by such
367 facility (including their corrosive and
368 deteriorative qualities), the sequence in which
369 such materials are transported, and the pressure
370 required for such transportation;

371 (3) The aspects of the areas in which the pipeline
372 facility is located, in particular the climatic and
373 geologic conditions (including soil
374 characteristics) associated with such areas, and
375 the population density and population and growth
376 patterns of such areas;
377 (4) Any recommendation of the National Transportation
378 Safety Board issued in connection with any
379 investigation conducted by the Board; and
380 (5) Such other factors as the presiding official may
381 consider appropriate.

382 (f) A recommended decision finding a facility to be hazardous
383 shall contain the following :
384 (1) A finding that the pipeline facility is hazardous
385 to life or property.
386 (2) The relevant facts which form the basis for that
387 finding.
388 (3) The legal basis for the recommended decision and
389 order.
390 (4) The nature and description of particular corrective
391 action required of the respondent.
392 (5) The date by which the required action must be
393 taken, or completed and, where appropriate, the
394 duration of the order.

395 (g) The Commission shall rescind or suspend a "hazardous facility
396 order" whenever it is shown to the Commission's satisfaction
397 that the facility is no longer hazardous to life or property.
398 When appropriate, however, such a recision or suspension may
399 be accompanied by a notice of probable violation issued under
400 Rule 7 of these rules.

401 (h) At any time after a hazardous facility order issued under
402 this rule has become effective, the Commission may request the
403 Attorney General to bring an action in court to enforce the
404 order as provided in article 7 of Title 40, C.R.S.

405 **Rule 16.** Injunctive action.

406 Whenever it appears to the Commission that a person has
407 engaged, is engaging in, or is about to engage in any act or
408 practice constituting a violation of any provision of the NGPSA,
409 or State rules, regulations or orders issued under the NGPSA, the
410 Commission may request the Attorney General to bring an action in
411 the appropriate district court for such relief as is necessary or
412 appropriate, including mandatory or prohibitive injunctive relief,
413 interim equitable relief, and monetary penalties as provided in
414 article 7 of Title 40 of the C.R.S.

415 revised 8/03/93jb